



MINNESOTA

PUBLIC UTILITIES COMMISSION

42nd Annual NCRA/Nashville
Judicial Deference to State Agencies in Minnesota
May 7, 2019
Dan Lipschultz, Vice Chair

Deference Spectrum in Minnesota



No Deference:

- Interprets own authority
- Interprets law outside its purview
- Interprets unambiguous law



Some Deference:

- *Arvig*:
technical + reasonable + long-standing
- *Annandale*:
technical + reasonable



Substantial Deference:

- Facts (quasi-judicial):
substantial evidence
- Policy (Legislative):
arbitrary & capricious



Most Recent Application of *Arvig*

May 18, 2010

In the Matter of a Petition by Excelsior Energy Inc. for Approval of a Power Purchase Agreement Under Minn. Stat. 216B.1694

- To qualify for power purchase agreement, 3rd party provider project had to be an innovative energy project that reduced emissions substantially below emissions of “traditional technologies.”
- PUC interpreted statutory term, “traditional technologies” to be “older coal plants currently in operation.” ALJ included “generic coal plants w/state of art emission controls
- Court upheld PUC in spite of contrary ALJ conclusion: **“We defer to the commission’s interpretation of ‘traditional technologies’ [under] the plain language ... and because energy-generating technologies are within the commission’s area of expertise.”**

Most Recent Application of *Annandale*

May 6, 2019

In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in the State of Minnesota

“Finally, even if we deemed the language of Minn. Stat. § 216B.1696 to be susceptible to more than one interpretation, we would reach the same result. *See Annandale*, 731 N.W.2d at 514. **In highly technical and complex matters, such as the case before us, we defer to an agency’s expertise and special knowledge in interpreting a statute it is charged with administering.** *See Max Schwartzman & Sons*, 670 N.W.2d at 754; *Annandale*, 731 N.W.2d at 514. There is no indication that the commission’s decisions were unreasonable, arbitrary, or capricious, and we are not persuaded that its interpretation of section 216B.1696 violates the statute’s plain meaning. We, therefore, defer to the commission’s implementation of the EITE statute.”

MN Deference Not Clear

- Both *Arvig* & *Annandale* recently applied by Ct. of Appeals, although Arvig's "long-standing" prong seems ineffectual – mentioned, but not applied.
- So it's all about purview, ambiguity & agency's technical expertise
- But agency's interpretation must still be reasonable in Court's judgment.

Compared to Chevron

- 3 Distinct Types of Federal Deference:
 - *Chevron* – based on separation of powers and technical expertise
 - *Auer* – based on agency authorship (agency interpreting own rules)
 - *Skidmore* – limited deference based on expertise/persuasive power
- Minnesota Deference:
 - based entirely on expertise, not separation of powers doctrine
 - includes interpretations of federal rules enforced by state agency
 - doesn't appear to distinguish between statutes & agency's own rules